

Tax Information Bulletin

STATE BOARD OF EQUALIZATION

ISSUED QUARTERLY
December 1997

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1. New Legislation Takes Effect

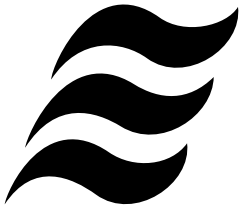
The following summaries reflect legislative changes enacted in 1997 affecting the Sales and Use Tax Law and selected other tax laws administered by the Board. The changes are effective January 1, 1998, unless otherwise indicated. For copies of bills, please write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814. — Editor.

Registration requirements — retailers whose business activity in California is limited to convention and trade shows. *Assembly Bill 258 (Chpt. 621, Stats. 1997, operative April 1, 1998).* Out-of-state retailers whose business activity in California is limited to convention and trade shows must generally register with

the Board and collect and report use tax for their taxable sales, including sales resulting from orders taken at those events. With the passage of AB 258, such sellers are still required to report use tax on sales at those events and on sales resulting from orders taken at those events; however, they are not required to report use tax on any other sales to California consumers if (1) their only physical presence in California is to engage in convention and trade show activities, (2) they engage in those activities for seven days or less in a twelve-month period, and (3) they derived no more than \$10,000 in gross income from those activities in the prior calendar year.

Sales of bunker fuel to water common carriers — sales tax exemption extended to January 1, 2003. *Assembly Bill 366 (Chpt. 615, Stats. 1997).* This exemption, previously scheduled to expire on December 31, 1997, applies to sales of bunker fuel to a water common carrier for the carrier's use after it reaches its first out-of-state destination. Sales tax applies only to the portion of fuel required to reach the first out-of-state destination.

The sale or use of blood bags and associated items is not subject to tax. *Assembly Bill 993 (Chpt. 773, Stats. 1997).* Beginning April 1, 1998, the sale and use of any container used to collect or store human whole blood, plasma, blood products, or blood derivatives, including any disposable tubing, filters, grommets, and needles sold along with the container, is not subject to sales or use tax. The exemption includes, but is not limited to, the sale and use of blood collection units and blood pack units.



City of Woodland may levy a transactions and use tax upon city council and voter approval. *Assembly Bill 1472 (Chpt. 712, Stats. 1997).* If approved by a majority vote of the city council members and the city's qualified voters, the City of Woodland may levy a transactions and use tax at a rate of 0.25 or 0.50 percent.

City of Madera authorized to impose a transactions and use tax. *Senate Bill 355 (Chpt. 409, Stats. 1997),* authorizes the City of Madera to levy a transactions and use tax of 0.25 percent for purposes of funding public safety services. The tax must be approved by a majority vote of all the members of the city council and approved by two-thirds vote of the voters of the city.

Pharmacists are now considered consumers of replacement contact lenses. *Senate Bill 13 (Chpt. 184, Stats. 1997).* Licensed pharmacists dispensing replacement contact lenses in accordance with section 4124 of the Business and Professions Code are consumers, rather than retailers, of the lenses.

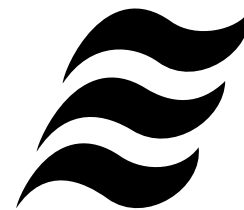
Qualifying persons, including local governments, may apply for a "use tax direct payment permit." *Senate Bill 110 (Chpt. 702, Stats. 1997).* A qualifying person, as defined, who agrees to self-assess and pay use tax directly to the Board, can apply for a "use tax direct payment permit." A qualifying person includes (1) a city, county, city and county, or redevelopment agency; or (2) a person who, during the calendar year immediately preceding the permit application, purchased for his or her own use, or was the lessee of, tangible personal property costing a total of at least \$500,000 in the aggregate. The permit holder will be allowed to issue a "use tax

direct payment certificate" to any registered retailer or seller, relieving that person from the responsibility for collecting use tax. Any permittee who issues such a certificate will, in addition to the applicable use tax liabilities, be subject to the same penalty provisions that apply to a seller or retailer.

Subject to voter approval, counties can impose a transactions and use tax to fund public libraries. *Senate Bill 154 (Chpt. 88, Stats. 1997).* Counties may impose a transactions and use tax of 0.125 percent or 0.25 percent to fund public libraries. The tax must be approved by a two-thirds vote of the voters and can be imposed for a period not to exceed sixteen years.

Sales and Use Tax Exemption — Ground Control Stations. *Senate Bill 1101 (Chpt. 733, Stats. 1997)* exempts from sales or use tax the sale or purchase of a ground control station, which is defined as a "portable facility used to operate aircraft in the air without a pilot on-board" and includes controls, video equipment, computers, generators and communications equipment sold as an integral part of the station, and antennas used to operate the aircraft. The definition excludes trucks, or tractor-trailers, or other devices solely used to transport the ground control stations.

Alternative audit program. *Senate Bill 1104 (Chpt. 686, Stats. 1997)* allows the Board to adopt a managed audit program in which a business could perform an audit of its own books and records, with limited guidance from the Board, in order to determine any tax deficiencies. This program will be limited to select businesses who have the resources to comply with the instructions provided by



the Board. In return for performing the managed audit, the taxpayer will be liable for only one-half of the interest usually imposed under current law. More information on this program will be provided in an upcoming *Tax Information Bulletin*.

2. Tax Rates Will Change in San Benito and Tulare Counties

Effective January 1, 1998, the sales and use tax rate in San Benito County will decrease from 8.25% to 7.75%, and the rate in Tulare County will decrease from 7.75% to 7.25%.

San Benito County

The San Benito County General Fund Augmentation (SBTU) transactions (sales) and use tax will expire at midnight on December 31, 1997. Consequently, taxable transactions occurring after December 31, 1997, are not subject to the SBTU tax. With the expiration of the 0.50 percent SBTU tax, the tax rate in the county will decrease to 7.75 percent on January 1, 1998.

You must report the SBTU tax on taxable transactions occurring on or before December 31, 1997. If you collect SBTU sales tax reimbursement or use tax after December 31, 1997, you must return the amount of tax collected to your customers or forward it to the state.

Note: The San Benito County Council of Governments tax district, which has been in effect since 1989, remains in effect. You should continue to report transactions (sales) and use taxes for this district.

Tulare County

The Tulare County Transactions and Use Tax (TCTU) will expire at midnight on December 31, 1997. Consequently, taxable transactions occurring on or after January 1,

1998, are not subject to the TCTU tax. With the expiration of the TCTU tax, the overall sales and use tax rate in the county will return to 7.25% effective January 1, 1998.

You must continue to report the TCTU tax for taxable transactions occurring on or before December 31, 1997. If you collect TCTU sales tax reimbursement or use tax after December 31, 1997, you must return the amount of tax collected to your customers or forward it to the state.

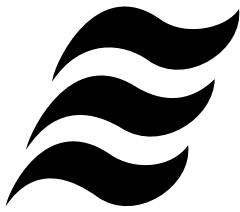
3. Alternative Settlement Program for Disputed Tax Cases

Many taxpayers are unaware of the Board's tax settlement program, under which the Board is authorized to settle disputed civil tax matters — cases that are the subject of protests, appeals, or refund claims. The purpose of the settlement program is to reduce the time and costs that can be incurred through the normal appeals process.

Staff in the Settlement Section independently examine the facts of a case and the arguments set forth by the taxpayer. Considering the applicable law and evaluation of the facts, staff may negotiate a proposed settlement agreement that differs from the original billing notice. That agreement, if accepted by the taxpayer, is subject to approval by the Executive Director, the Attorney General's Office, and the Members of the Board. Such agreements become final and cannot be appealed.

Only active cases for which a Petition for Redetermination or a Claim for Refund has been filed can qualify for settlement consideration. Other restrictions may apply.

For more information concerning sales and use tax cases, please call the Settlement



Section at 916-324-2836. Appeals for special taxes decisions may also be subject to settlement. For more information, please call the specific tax or fee program. For the Environmental Fees call 916-323-9555. Fuel Taxes call 916-322-9669. Information concerning possible settlement of excise taxes is available through our Information Center at 1-800-400-7115.

4. Understanding Your Rights As a Taxpayer

As a taxpayer, you have many rights under the Sales and Use Tax Law. These include the right to

- Know how the law affects you
- Be treated fairly, courteously, and promptly
- Question those actions and decisions of Board staff members and officers that affect your business operations

Of course, along with those rights, you have certain responsibilities, including the responsibility to

- Keep informed about tax laws and regulations
- Report and pay taxes when due
- Maintain adequate records of your business operations

If you have questions regarding your rights under the laws administered by the Board, you may call our Information Center and request a copy of publication 70, *The California Taxpayers' Bill of Rights*.

If you have questions concerning sales and use taxes as they apply to your business, you may want to order a copy of a pamphlet designed specifically for your type of business. These publications and others are listed in publication 51, *Guide to Board of Equalization Services*.

To request a publication, call our Information Center at 1-800-400-7115 and speak to a representative or leave a recorded message telling us where to mail you a copy. Several publications, including publication 51, are also available on the Internet at <http://www.boe.ca.gov>.

Some of our more frequently requested pamphlets include the following:

No. Title

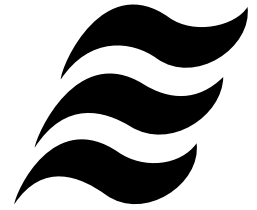
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| 9 | Tax Tips for Construction and Building Contractors |
| 22 | Tax Tips for the Dining and Beverage Industry |
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| 25 | Tax Tips for Auto Repair Garages and Services Stations |
| 31 | Tax Tips for Grocery Stores |
| 51 | Guide to Board of Equalization Services * |
| 71 | California City and County Sales and Use Tax Rates * |
| 73 | Your California Seller's Permit * |
| 74 | Closing Out Your Seller's Permit * |
| 76 | Audits and Appeals * |

* *This publication is available on our web site.*

5. Do You Sell Diesel Fuel to Train Operators?

If you sell diesel fuel to train operators and have paid diesel fuel tax on the fuel you sell, you can receive a tax refund if the fuel is purchased for exempt purposes. To receive a refund, you must be registered with the Board and meet certain other conditions.

If you are not registered and believe you qualify for a tax refund, please call our Fuel Taxes Division at 916-322-9669. A representative will discuss your situation with you. If you qualify, you can be



registered and will receive a copy of a recently issued notice that explains the tax refund program (SB 612: *Diesel Fuel Tax* — August 1997). This notice has been mailed to businesses that are currently registered under the diesel fuel tax program.

6. Highlights of 1997 Tax Information Bulletin Articles

Below is a summary of significant tax matters that were reported in the quarterly Tax Information Bulletins published during 1997. If you have questions about the articles or would like to order copies, please call our Information Center at 1-800-400-7115. Copies of 1997 bulletins are also available on our web site, at <http://www.boe.ca.gov>.

(1) Sales and Use Tax Rate Increases in Santa Clara County on April 1, 1997 (March 1997)

On April 1, 1997, the sales and use tax rate in Santa Clara County increased to 8.25 percent. Your taxable sales are subject to the 8.25 percent rate if you

- Are a retailer located in the county and your merchandise is sold and delivered within the county.
- Are a retailer located outside the county who is engaged in business in the county, and you sell merchandise for use in the county. You are considered to be engaged in business in the county if you (1) have any type of business location there, (2) deliver into the county using your own vehicles, or (3) have an agent or representative in the county who makes sales, takes orders, or makes deliveries.
- Are a dealer of vehicles, undocumented vessels, or aircraft, and you sell those items to persons who will register them in the county.

- Collect tax on lease payments you receive for leased property used by the lessee in the county.

Effect on fixed-price contracts and leases: If you entered into a fixed-price contract or fixed-price taxable lease agreement prior to April 1, 1997, your contracts are subject to the 7.75 percent tax rate in effect prior to April 1, 1997. To qualify as fixed-price, neither party can have the unconditional right to terminate the contract or lease. In addition, the tax amount or rate must be specifically stated in the contract or lease agreement.

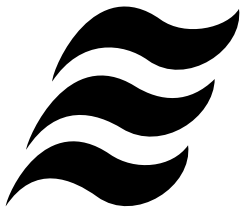
(2) Do You Sell Flowers or Plants? (March 1997)

Effective January 1, 1997, retail florists, including mobile retail florists, are subject to a \$500 fine if they make sales without a proper sales and use tax permit (the fine is in addition to all other penalties that may apply). Moreover, all florists are required to have a copy of their permit at each location where they make sales, including all temporary locations.

(3) Sales and Use Tax Rate in Santa Cruz County Changes April 1, 1997 (March 1997)

Effective April 1, 1997, the sales and use tax rate in Santa Cruz County decreased to 8.0 percent. Your sales are subject to the 8.0 percent rate if you

- Are a retailer located in the county and your merchandise is sold and delivered within the county.
- Are a retailer located outside the county who is engaged in business in the county, and you sell merchandise for use in the county. You are considered to be engaged in business in the county if you (1) have any type of business location there, (2) deliver into the county using



your own vehicles, or (3) have an agent or representative in the county who makes sales, takes orders, or makes deliveries.

- Are a dealer of vehicles, undocumented vessels, or aircraft, and you sell those items to persons who will register them in the county.
- Collect tax on lease payments you receive for leased property used by the lessee in the county.

Effect on contracts that specify the 8.25 percent rate that was in effect prior to April 1, 1997: Contracts and taxable lease agreements entered into prior to April 1, 1997, are subject to the new, lower 8.0 percent rate.

(4) New Legislation Affects Airline Industry and Suppliers (March 1997)

The terms "component parts" and "qualifying aircraft" are described in detail in the original Tax Information Bulletin article. - Editor

As of October 1, 1996, sales or use tax no longer applies to the sale or purchase of property that becomes a component part of a qualifying aircraft, when purchased to maintain, repair, overhaul or improve the aircraft in compliance with Federal Aviation Administration (FAA) requirements.

When selling or purchasing property that will qualify for the exemption, an exemption certificate should be provided and retained. You can obtain a copy of the proposed exemption certificate by calling our Information Center at 1-800-400-7115 and requesting a copy of the notice *Changes in the Sales and Use Tax Law Affect Airline Industry* (dated December 1996).

(5) Oil Recycling Fee Has a New Home (June 1997)

Effective July 1, 1997, responsibility for administering the oil recycling fee program

moved to the California Integrated Waste Management Board (CIWMB), which now mails and processes all oil recycling fee returns. The fee is imposed on the first sale or use of lubricating oil in California. If you have questions regarding the fee, please call the CIWMB at 916-255-2291.

(6) How to Verify a Seller's Permit (September 1997)

When accepting resale certificates, a retailer may question whether the permit listed on the certificate is current. To help ensure that a seller's permit is valid, the Board has established a telephone verification service within our Information Center. The service is available Monday through Friday, except State holidays, from 8:00 a.m. to 5:00 p.m.



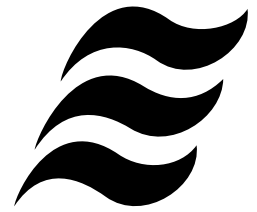
Note to businesses that file tax returns once a year: Each year, you receive only the December *Tax Information Bulletin*, which includes highlights of articles printed in the three previous bulletins. If you would like to receive all four bulletins each year, please write to the following address and ask to be added to Mailing List #15: State Board of Equalization; Mail Services Unit (MIC:12); Attn: Addressing Systems; P.O. Box 942879; Sacramento, CA 94279-0012.

7. Modular Panelized Office Systems

Do you sell and assemble modular office systems? If so, your labor charges could be taxable.

In general, labor charges to install a *completed* product are not subject to tax. However, if a product requires assembly, it is not "complete," and the assembly labor is generally subject to tax.

The assembly and installation of panelized



systems that form work stations or offices in an open area is a taxable transaction. The panelized system is generally sold as a freestanding, integrated system consisting of individual components requiring design and configuration before the system itself is complete. Labor charges to attach panels in place, one-by-one, are the fabrication/assembly of a system that does exist until all the panels are connected. These charges are included in the taxable sales price of the panelized system and are subject to tax, whether separately stated on the invoice or not.

If you are a subcontractor and have contracted with the seller to assemble and install a modular office system or if you are reconfiguring an existing system, the application of tax may differ. For more information on such transactions, please call our Information Center at 1-800-400-7115.

8. Common Errors Discovered in Audits: Reporting Purchases Subject to Use Tax

Many businesses fail to report to the Board their purchases that are subject to use tax. Consequently, when the omission is discovered, they are subject to interest and penalty charges in addition to the payment of the overdue tax.

The use tax is a complementary tax to the sales tax. In general, purchases subject to use tax include the following: (1) purchases made for resale but used for another purpose and (2) purchases made from out-of-state retailers.

Purchases Made for Resale but Used for Another Purpose

If you use a resale certificate to purchase merchandise that you intend to resell, the

purchase is not subject to California sales tax. However, if you use the merchandise for another purpose before you resell it, the purchase generally becomes subject to use tax and must be reported on your return. Using merchandise purchased for resale for demonstration or display purposes is not a use that is subject to use tax.

Purchases Made from Out-of-State Retailers

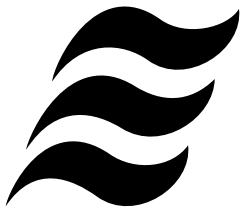
In general, if you purchase tangible personal property from an out-of-state retailer without paying California tax and use the property for purposes other than for resale, the purchase is subject to use tax and must be reported on your return. In some cases, an out-of-state retailer is registered to collect and report California use tax. If you have been given a receipt by such a retailer, indicating you have paid the California use tax, and if the correct amount was collected, you do not need to report the purchase on your return.

The amount paid for purchases subject to use tax must be reported on Line 2 of your State, Local and District Sales & Use Tax Return.

9. Property Tax Exemption Claims: New Filing Deadlines

The change described below is the result of the passage of Senate Bill 542 (Chpt. 941, Stats. 1997).

Effective January 1, 1998, the deadline for filing property tax exemption claims (for example, those filed by religious and charitable institutions) has been moved up to February 15. Previously, the deadline varied from March 15 to April 15, depending on the type of exemption claimed. Late filing provisions for the various exemptions have also been revised.



10. New or Revised Reference Material

If you would like to obtain a copy of any of the following reference material, please call the Information Center.

Sales and Use Tax Regulations

- 1528 Photographers, Photocopiers, Photo Finishers, and X-Ray Laboratories (effective October 4, 1997)
- 1698 Records (effective October 4, 1997)

Sales and Use Tax Publications

- 40 Tax Tips for the Watercraft Industry (Addendum) — July 1997
- 74* Closing Out Your Seller's Permit — revised July 1997
- 75* Interest and Penalty Payments — revised July 1997
- 80-A Electronic Funds Transfer Program, ACH Credit Information — revised October 1997
- 91 Tire Recycling Fee — revised July 1997
- 92 Alcoholic Beverage Tax — revised July 1997
- 93 Cigarette Tax — revised July 1997

* Available at our Internet site:
<http://www.boe.ca.gov>

For Assistance

Information Center. Call 24 hours a day to use our automated services, including our fax-back service. To speak to a representative, call between 8:00 A.M. and 5:00 P.M., Monday through Friday, excluding State holidays.

1-800-400-7115

For telephone devices for the deaf:

1-800-735-2929 (TDD phone)

1-800-735-2922 (voice phone)

Internet. Visit us at <http://www.boe.ca.gov> for information on sales and use tax rates by county, publications, district office telephone numbers, public meetings, and so forth.

Taxpayers' Rights Advocate. If you need help with problems you have been unable to resolve at other levels, please call the Advocate's office at 1-888-324-2798.

Tax Evasion Hotline. To report suspected tax evasion, call us toll-free at 1-888-334-3300.

Legislative Bills. Write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814. The Bill Room does not provide copies of Board forms or publications.